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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/110,694	07/07/1998	RANDELL L. MILLS	9113-19-C15	5009

7590 08/15/2006

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EXAMINER
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KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/110,694

**Applicant(s)**

MILLS, RANDELL L.

**Examiner**

Stephen J. Kalafut

**Art Unit**

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-326 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-326 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09 June 2006</u> . | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1745

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 June 2006 has been entered.

Claims 1-326, for reasons of record, are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. See paper no. 10, paragraph no. 2.

Claims 1-326, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 8, paragraph no. 3.

Applicant's arguments filed 09 June 2006 have been fully considered but they are not persuasive.

Applicant argues (page 1) that he has submitted with his response “new, non-cumulative scientific evidence” in support of his theory. The response submitted on 09 June 2006 includes four articles of evidence, attachments 74, 80, 94 and 100, each of which is already of record.

Applicant argues (page 4), that the “Committee does not even mention, let alone consider, most of the certified experimental evidence” that he has submitted. Contrary to this

Art Unit: 1745

assertion, the reasons that the evidence has not been persuasive were explained in the Office action mailed 10 February 2004 and the Appendix attached thereto. Failure to be persuaded is not the same thing as a refusal to consider.

Once again applicant faults the "Committee" for relying on Krieg (page 28), doing so because the "Committee" was "feeling the pressure to back up its claims". Krieg was not cited because of any "pressure", but to address a specific argument raised by applicant, that the "Committee" has failed to find any physical law the applicant has violated.

Applicant argues (page 30) that in the Appendix to the Office action of 24 August 2004, Dr. Souw stated that "[t]he PTO's view is not at all that the existence of lower-energy hydrogen were [sic] impossible", which would mean that "lower energy states cannot be in violation of any physical law", and that the "Committee" has taken a contrary position, taking the "ground state of an electron of a hydrogen atom" to be a physical law that applicant has violated. This statement concerning the position of the "Committee" would contradict applicant's assertion (page 24), that the "Committee" has failed to identify any laws that have been violated. However, in stating Dr. Souw's position, applicant omits part of Dr. Souw's statement, where he states that "(a) Applicant's invention is not supported by any experimental fact or evidence, and (b) the underlying theory (i.e., GUT/CQM) fails to support the invention, because it contains too many flaws", the theory that Dr. Souw refers alleging the existence of lower-energy hydrogen. Since the theory behind lower-energy hydrogen is flawed (according to Dr. Souw), their existence is not supported, and the physical law concerning the "ground state" of hydrogen atoms remains accepted by the examiner.

Applicant argues (page 39) that an “*APS News Online Bulletin*, dated August/September 2002, suggests that Dr. [Robert] Park is maintaining his questionable PTO contacts, apparently with the agency's blessing”, thus having knowledge of Patent applications filed during 2002, and not merely of applicant's applications at various times during the year 2000, and further states that the subject matter of such applications “is supposedly kept confidential”. This ignores the fact the Office has been publishing Patent applications under the Pre-Grant Publications program, as early as July 2001, over a year before the date of the above-mentioned *APS News Online Bulletin*. As before, instead of a “Deep Throat” or other improper contact, the *Bulletin* was based on information that was publicly available.

Applicant argues (page 132) that the “Committee” contradicts itself in the statement in the Office action of 09 September 2005, in serial no. 09/362,693, and in the Advisory action of 12 December 2005, in the present application, “which do not necessarily require the use of hydrinos, while applicant's invention (in the present application) deal with methods of making compounds that include hydrinos”. Applicant takes this as an admission that the committee has “been forced to recognize the operability of BlackLight's novel hydrogen technology based on the required use of hydrinos to distinguish it from Dr. Souw's work”. This statement was, and is, in no way whatsoever intended to be taken as an admission that the present examiner, or anyone consulted thereby, considers applicant's invention to be operable. The statement was only intended to show how Dr. Souw's work is seen as not conflicting with applicant's invention, without regard to its operability or patentability.

Applicant argues (page 138) that Dr. Souw has relied on a fraud made by Dr. Andreas Rathke, where Dr. Rathke changes mathematical signs in applicant's equations (1) and (9).

Art Unit: 1745

Since the articles which Dr. Rathke cites (nos. 24 and 25, on page 8 of his article) are not of record, whether Dr. Rathke has done what applicant alleges cannot be determined. However, it is noted that equation (1), on page 2 of the Rathke article appears identical to Equation (2) in applicant's attachment 58, except that applicant uses the coordinates "r", "theta" and "phi" within the parentheses, along with "t", whereas Rathke uses only "x" and "t". No signs, such as plus or minus, have been changed.

Applicant argues (page 165) that the different catalysts will provide a different distribution of lower energy states for hydrogen, and that if the catalyst enthalpy is properly considered, the "Committee will arrive at the correct equation in which the spectral lines have a relationship of  $q \propto 13.6 \text{ eV}$ ". The values calculated for "q", based on levels of "p", were done for all possible levels of "p" down to 5. Thus, even if different catalysts produce different levels of "p" and "q", one is able to determine, from applicant's own formula, all of the values that would be possible, and thus eliminate those which are not. (This is not an admission that any values of "p" other than 1, corresponding to  $n=1$ , can actually exist, only a consideration of the implications of applicant's formula.) As pointed out previously, some values of "q" were observed that were not predicted by applicant's formula, while others that were predicted were not observed. There were others that were both predicted and observed. This would mean that if one must figure in "catalyst enthalpy" in order to arrive at certain observed values, one would still have to take other values at face value, not adding or subtracting any catalyst enthalpy. In other words, inconsistently take it into account for some observed values, but not for others.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Faris *et al.* (US 2001/0007725) is cited to show the publication of Patent applications as early as July 2001, thus rendering their content publicly available. The Office publishes all applications, as early as 18 months after filing, unless the inventor requests otherwise.

This is a Request for Continued Examination of applicant's earlier Application No. 09/110,694. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

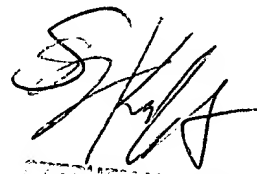
Art Unit: 1745

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk

  
STEPHEN KALAFUT  
PRIMARY EXAMINER  
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